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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUL -7 2009

COMMISSIONERS

KRISTIN K. MAYES, Chairman

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF COMMUNITY WATER COMPANY OF
GREEN VALLEY FOR AUTHORITY TO ISSUE
DEBT UP TO \$2.810 MILLION.

DOCKET NO. W-02304A-09-0153

RESPONSE TO STAFF REPORT

Community Water Company of Green Valley ("CWCGV") hereby provides its Response to the Staff Report filed June 25, 2009. CWCGV appreciates the Staff recommendation to approve the request to finance \$2.810 million of debt so that it can continue to provide safe and reliable service. CWCGV agrees with the majority of the recommendations contained in the Staff Report. However, the Company requests modification of the date that it is required to submit documentation from the Arizona Department of Water Resources ("ADWR"). CWCGV also has some concerns regarding the Staff Report's discussion regarding CWCGV's Agreement with the Central Arizona Water Conservation District ("CAWCD") for payment of past Central Arizona Project ("CAP") Municipal & Industrial ("M&I") water service capital charges (attached as Exhibit 1 and referred to heretofore as the "Agreement").

I. STAFF'S RECOMMENDATION THAT CWCGV PROVIDE DOCUMENTATION FROM ADWR BY JULY 31, 2009, THAT THE COMPANY IS IN COMPLIANCE.

Regarding the recommendation that the Company docket documentation by ADWR that it is currently in compliance, CWCGV's believes the deadline for filing should be 180 days from the effective date of the Commission order. The reasons are twofold. First, CWCGV is not sure this matter would proceed to Open Meeting on or before July 31, 2009, and the recommendation may cause confusion regarding compliance. More importantly, because ADWR is likely facing significant resource constraints, CWCGV cannot be sure it will receive the required documentation in such a tight timeframe. While CWCGV has submitted its request for the Staff-recommended

1 documentation from ADWR, it is not certain when it will receive that documentation. CWCGV
2 would request 180 days from the effective date of the order to better ensure it can receive the
3 requested documentation from ADWR.

4 **II. STAFF'S RECOMMENDATION THAT CWCGV FILE AN APPLICATION**
5 **REGARDING CWCGV'S AGREEMENT TO PAY PAST CAP M&I WATER**
6 **SERVICE CAPITAL CHARGES.**

7 Although the Agreement with CAWCD is not related to the financing authority sought in
8 this Docket, the Staff Report addresses certain potential issues related to that Agreement. The Staff
9 Report describes the Agreement as a long-term agreement with CAWCD for additional CAP
10 allocation and suggests that the Agreement may constitute a "5-year unauthorized existing debt." In
11 fact, the Agreement is effectively a 5-year installment contract for the payment of past CAP M&I
12 water service capital charges – required to receive the additional allocation of CAP M&I water.
13 Moreover, the Company is unaware of any similar contract being considered as an evidence of
14 indebtedness requiring Commission approval.

15 First, the Agreement is just one component of CWCGV receiving an additional 1,521 acre-
16 feet allocation of CAP water. In fact, the Agreement is specifically for the payment of past CAP
17 M&I water service capital charges – which CWCGV agreed to as part of obtaining the additional
18 allocation. The award of the additional allocation to CWCGV was the result of a much broader
19 process involving several steps and significant federal action. In order to obtain the additional
20 allocation, CWCGV needed to provide payment for past CAP M&I water service capital charges as
21 part of the broader framework to ensure costs of the CAP were repaid in accordance with Federal
22 Reclamation Laws¹. It did so, in accordance with both federal and state law – and the public policy
23 to obtain renewable supplies of water. In short, CWCGV had two choices: (1) make payments for
24 past CAP M&I water service capital charges in order to obtain an additional renewable supply of
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27 ¹ This includes the Boulder Canyon Project Act, 70 Pub. L. 642, 45 Stat. 1057 (1928); Reclamation Project Act, 53
Stat. 1187 (1939); Colorado River Basin Project Act, Pub. L. 90-537, 82 Stat. 885 (1968); and Arizona Water
Settlements Act, Pub. L. 108-451, 118 Stat. 3478 (2004), all as amended.

1 water as set forth in the Agreement; or (2) not accept the additional allocation. CWCGV chose the
2 former option. CWCGV also had the option of paying for the past CAP M&I water service capital
3 charges in a lump sum, or spreading those payments over five years. CWCGV chose the latter
4 option. The Agreement is simply a five-year installment contract by which CWCGV pays CAWCD
5 for past CAP M&I water service capital charges – as CWCGV indicated it would do so during the
6 CAP reallocation process described earlier in this pleading. These capital charges are related to
7 CAWCD's obligation to repay U.S. DOI for the CAP. There is no interest component described in
8 the Agreement; CWCGV makes five payments of \$222,994.93 starting December 1, 2007 and
9 continuing every December 1 thereafter through 2011. The Agreement is effectively similar to a
10 contract to purchase a good or service with a set number of installment payments. This is not a note
11 or a bond, nor is the Agreement similar to either such instrument.

12 Second, the Agreement for payment of past CAP M&I water service capital charges is a no-
13 risk contract that does not encumber any other assets of CWCGV; whatever payments CWCGV
14 makes are refunded if it decides it no longer wants the additional CAP allocation. The Agreement is
15 clearly not a note or bond, but more closely resembles a purchase contract with installment
16 payments. Thus, interpreting the statute under the doctrine of *ejusdem generis*, it is also not an
17 evidence of indebtedness under A.R.S. §§ 40-301 and 40-302. Further, CWCGV is not aware of
18 any other public service corporation needing approval for this type of agreement under those
19 statutes. CWCGV believes that the Agreement is not different than the arrangement made by Avra
20 Water Co-op, Inc. ("AVRA") for annual payments of \$115,000 to CAWCD for five years starting
21 January 2008, which did not appear to be considered an evidence of indebtedness subject to A.R.S.
22 §§ 40-301 and 40-302². Although AVRA may have classified the payments differently for
23 accounting purposes, that factor is not sufficient to distinguish CWCGV's Agreement with the
24 CAWCD from AVRA's similar agreement with CAWCD. For these reasons, CWCGV does not

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27 ² Avra Water received an additional 808 acre-feet per year pursuant to the re-allocation as announced in Central
Arizona Project (CAP), Arizona; Water Allocations, 71 Fed. Reg. 50449 – 50452 (August 25, 2006) and per the
AWSA at § 104(b).

1 believe filing a subsequent application is necessary to make the determination that the Agreement is
2 not an evidence of indebtedness under A.R.S. §§ 40-301 and 40-302.

3 Finally, CWCGV appreciates the Staff Report's ultimate recommendation on this issue
4 because it does not delay what is a necessary approval of \$2.810 million in debt financing in order
5 for CWCGV to safely and reliably provide service to its member customers. Should the
6 Commission have some concern about whether the Agreement – a 5-year installment contract – is
7 subject to approvals under A.R.S. §§ 40-301 or 40-302, then holding a separate proceeding would
8 be an appropriate means of addressing those issues. In short, CWCGV would prefer addressing the
9 matter in a separate proceeding over any delays in the financing request here. This is because, as
10 stated in the Application, CWCGV must receive approval for the \$2.810 million financing by
11 October 1, 2009, so that it can avoid potentially disastrous consequences likely to affect its ability
12 to provide safe and reliable service.

13 **III. CONCLUSION.**

14 CWCGV appreciates Staff's recommendation to approve its request for \$2.810 million in
15 financing. However, CWCGV would request changing the date of the requirement to submit the
16 ADWR documentation to 180 days after the effective date of the order. Moreover, although
17 CWCGV understands Staff's position regarding the Agreement for payment of past CAP M&I
18 water service capital charges, CWCGV believes the condition is not necessary for the relief
19 requested in this docket.

20 RESPECTFULLY SUBMITTED this 7th day of July, 2009.

21 COMMUNITY WATER COMPANY OF GREEN VALLEY

22
23 By 

24 Jason D. Gellman
25 Michael W. Patten
26 ROSHKA DEWULF & PATTEN, PLC.
27 One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Attorneys for Community Water Company of Green Valley

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PHOENIX, ARIZONA 85004
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1 Original and thirteen copies of the foregoing
2 filed this 7th day of July, 2009, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

5 Copy of the foregoing hand-delivered
6 this 7th day of July, 2009, to:

7 Lyn A. Farmer, Esq.
8 Chief Administrative Law Judge
Hearing Division
9 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

10 Janice Alward, Esq.
11 Chief Counsel, Legal Division
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13 Ernest Johnson
14 Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

15 Arturo R. Gabaldon
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17 Community Water Company of Green Valley
1501 South La Canada
18 Green Valley, AZ 85614-1600

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20 By Rebbie Amoral
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24
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27

EXHIBIT

"1"



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23636 N. 7th Street • Phoenix, AZ 85024
623-869-2333 • www.cap-az.com

CWC
1121
Control #

November 21, 2007

Mr. Art Gabaldon
General Manager
Community Water Company of Green Valley
1501 S. LaCanada Drive
Green Valley, Arizona 85614

Subject: Agreement for Payment of Past CAP M&I Water Service Capital Charges

Dear Mr. Gabaldon:

Enclosed for your files is a fully executed original of the Agreement for Payment of Past M&I Water Service Charges. If you have any questions about this matter, please contact Sheila Brennemann at 623-869-2368.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Suzanne K. Ticknor".
for Suzanne K. Ticknor
Senior Attorney

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Enclosure
232.01

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**AGREEMENT FOR PAYMENT OF
PAST CAP M&I WATER SERVICE
CAPITAL CHARGES
(INSTALLMENT)**

THIS AGREEMENT (Agreement) is made and entered into this 21st day of November, 2007, by and between Central Arizona Water Conservation District (CAWCD) and Community Water Company of Green Valley.

RECITALS

A. On or about March 11, 1987, the United States of America (United States) acting through the Secretary of the Interior (Secretary), CAWCD and the Community Water Company of Green Valley entered into a subcontract for the delivery of Central Arizona Project (CAP) municipal and industrial (M&I) priority water, titled "Subcontract Among the United States, the Central Arizona Water Conservation District and the Community Water Company of Green Valley, Providing for Water Service, Central Arizona Project", Contract No. 07-07-30-W0151.

B. On August 25, 2006, the Secretary published his final reallocation decision for Central Arizona Project water. That decision reallocated previously uncontracted for CAP M&I priority water to various M&I water providers in accordance with section 104(b) of the Arizona Water Settlements Act of 2004, Pub. L. 108-451, (the Act) and the recommendation of the Arizona Department of Water Resources. In the final reallocation decision, 1,521 acre-feet of additional CAP M&I priority water was allocated to the Community Water Company of Green Valley.

C. In accordance with the Act, the United States and CAWCD have offered the Community Water Company of Green Valley an amended subcontract for CAP M&I priority water, (Amended Subcontract). The Amended Subcontract provides for an annual entitlement of 2,858 AF, which includes the Community Water Company of Green Valley's original CAP entitlement in the amount of 1,337 AF/year, and the additional entitlement recently reallocated to the Community Water Company of Green Valley in the amount of 1,521 AF/year (the Additional Entitlement).

D. The Amended Subcontract has been fully executed by the United States, CAWCD and the Community Water Company of Green Valley. Article 4.2 of the

Amended Subcontract provides that it does not become effective until three conditions have been satisfied:

- 1) The Amended Subcontract is validated by a court of competent jurisdiction, as described in A.R.S. sections 48-3731 through 48-3734;
- 2) The Secretary publishes in the Federal Register the statement of findings described in Section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478; and
- 3) Community Water Company of Green Valley pays or provides for payment of past M&I water service capital charges associated with the Additional Entitlement.

E. CAWCD has given the Community Water Company of Green Valley the option of paying the past M&I water service capital charges associated with the Additional Entitlement in one lump sum by December 1, 2007 (Payment Option 1) or on a five-year levelized payment plan with the first installment due December 1, 2007 (Payment Option 2)

F. Community Water Company of Green Valley has elected Payment Option 2.

G. The Parties desire to make arrangements for the timely payment of past M&I water service capital charges associated with the Additional Entitlement. The Parties also desire to provide for the refund of any such payments in the event that the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as set forth in Section 207(c)(2) of the Act, or such other date as that Section 207(c)(2) is amended to state.

AGREEMENT

1. Community Water Company of Green Valley agrees to make payment of past M&I water service capital charges associated with the Additional Entitlement in the amounts and on the dates set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit 1.

2. On or before October 25, 2007, CAWCD shall submit a written invoice to the Community Water Company of Green Valley for the first installment of past M&I

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water service capital charges associated with the Additional Entitlement, consistent with Exhibit 1.

3. On or before December 1, 2007, Community Water Company of Green Valley shall pay CAWCD the first installment of past M&I water service charges as invoiced by CAWCD.

4. On or before October 25, of each year, from 2008 through and including 2011, CAWCD shall submit a written invoice to the Community Water Company of Green Valley for the annual installment amount due under the levelized payment plan for past M&I water service charges, consistent with Exhibit 1.

5. On or before December 1 of each year, from 2008 through and including 2011, Community Water Company of Green Valley shall pay CAWCD the past M&I water service charges as invoiced by CAWCD.

6. If Community Water Company of Green Valley is in arrears in the payment of any of the installments due CAWCD under this Agreement, Community Water Company of Green Valley shall have no right to delivery of the Additional Entitlement until such delinquent payment is made, plus any applicable late charges pursuant to Paragraph 7 below.

7. Community Water Company of Green Valley shall pay a late payment charge on installments that are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

8. If the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as necessitated by Section 207(c)(2) of the Act, or by such other date established by that Section 207(c)(2) of the Act under a future

amendment, then CAWCD shall refund the first installment of the past M&I water service capital charges paid by the Community Water Company of Green Valley pursuant to Section 2 of this Agreement, with interest accrued at the prevailing local government investment pool rate, to the Community Water Company of Green Valley on or before sixty days after such date.

9. Governing Law, Forum. This Agreement shall be governed by the law of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.


10. Integration. All rights and obligations of the parties shall be governed by the terms of this Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be construed as consent to any suit or waiver of any defense in a suit brought against the other party in any state or federal court.

11. Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party, without penalty, pursuant to the provisions of A.R.S. § 38-511.

12. Waiver; Severability. The parties agree that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal or unenforceable, that declaration shall not affect the remaining provisions of this Agreement.

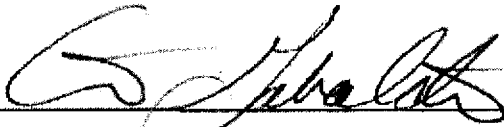
IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.


**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: 
Sid Wilson, General Manager

CMC 081110 07683

**COMMUNITY WATER COMPANY
OF GREEN VALLEY**

By: 

Attest: 

CMC 081110 07684

**Arizona Water Settlement Act
Allocation of 1,521 Acre-Feet
Payment Schedule for
Community Water Company of Green Valley**

<u>Payment Due Date</u>	<u>Amount</u>
December 1, 2007	\$222,994.93
December 1, 2008	\$222,994.93
December 1, 2009	\$222,994.93
December 1, 2010	\$222,994.93
December 1, 2011	\$222,994.93